DEPARTMENT OF STATE REVENUE
REVENUE RULING IT 98-03
June 2, 1998

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ISSUE

Gross Income Tax – Gross Income Received From Processing Coal Into Coke

Authority: IC 6-2.1-2-1, IC 6-2.1-2-4, IC 6-2.1-2-3, State of Indiana Department of Revenue v. Apex Steel & Supply Co., Inc. 375 N.E. 2d 598 (Ind. Ct. App. 1978), IC 6-2.1-2-5

The taxpayer requests the Department to rule on the applicable gross income tax rate for gross income received from processing coal into coke.

STATEMENT OF FACTS

The taxpayer is a steel producer with a facility in Indiana. The taxpayer utilizes coke oven batteries to produce coke that is essential to its steel making operations. The taxpayer intends to sell a coke oven battery to a company unrelated to the taxpayer. After the sale the taxpayer will process coal into coke at the coke oven battery pursuant to an Operating and Maintenance Agreement with the purchaser of the coke oven battery. The taxpayer will be paid an annual fee and will be eligible for a production bonus fee. The taxpayer will be reimbursed by the purchaser of the coke oven battery for the costs of operating, maintaining and repairing the coke oven battery.

The taxpayer will, also, contract to provide the coal handling services and coke handling services required in the production of coke at the coke oven battery under a Common Facilities Agreement.

A company related to the purchaser of the coke oven battery will purchase coal for use at the coke oven battery after consulting with the taxpayer to ensure that the metallurgical coal purchased will meet the taxpayer's specifications for coking coal.

The taxpayer will be obligated under a Coke Sales Agreement to purchase essentially all of the blast furnace and nut coke produced at the coke oven battery (the purchaser of the coke oven battery's sales outside the Agreement are limited). In addition, the taxpayer will purchase the coke by-products from the coke oven battery operations and process the by-products at its coal chemical plant.

Each of the above-described agreements provides for a nine (9) year term with one (1) year renewal options upon the mutual agreement of the parties. The taxpayer has a right of first refusal if the purchaser of the coke oven battery decides to sell or otherwise transfer ownership of the coke oven battery.

The taxpayer will perform all of the functions necessary to process coke from coal under the agreements, and the integrated steelmaking operations at the taxpayer's facility will continue in substantially the same manner as prior to the proposed transactions.

DISCUSSION

IC 6-2.1-2-1(c)(1) provides specific transactions that are defined as "wholesale sales" for gross income taxation purposes, including:

> (D) Receipts from industrial processing or servicing, including:
>
> > (i) tire retreading; and
> >
> > (ii) the enameling and plating of tangible personal property which is owned and is to be sold by the person for whom the servicing or processing is done, either as a complete article or incorporated as a material, or as an integral or component part of tangible personal property produced for sale by such person in the business of manufacturing, assembling, constructing, refining, or processing.

Pursuant to IC 6-2.1-2-4 and IC 6-2.1-2-3, receipts of gross income from "wholesale sales" are subject to the gross income tax rate of three-tenths of one percent (0.3%).

The Indiana Court of Appeals, in State of Indiana Department of Revenue v. Apex Steel & Supply Co., Inc. 375 N.E. 2d 598 (Ind. Ct. App. 1978), held that interpreting a statute mandates that, unless plainly repugnant to the intent of the legislature or the context of the rest of the statute, words and phrases shall be taken in their plain, or ordinary and usual, sense. The Court, further, determined in Apex Steel & Supply Co, Inc. that industrial "processing" and "servicing", (as used in IC 6-2-1-3 (recodified as IC 6-2.1-2-1), "in their plain and commonly understood meaning refer to performing some act upon a material in order to render it in a condition for further use, or for sale or into a finished state." Here, the taxpayer's production of coke from coal falls within the Court's definition of industrial "processing" and "servicing", hence, the gross receipts received by the taxpayer for coal processing activities (wholesale sales) under the Operating and Maintenance and Common Facilities Agreements are

subject to the gross income tax rate of three-tenths of one percent (0.3%). Any other gross receipts received by the taxpayer under the Operating and Maintenance and Common Facilities Agreements that are not for coal processing activities (including gross receipts received by the taxpayer under the Common Facilities Agreement for the purchaser's right of use of certain coal handling facilities and equipment, and other facilities and equipment located at the taxpayer's complex that will not be purchased) are subject to the gross income tax rate of one and two-tenths percent (1.2%) pursuant to IC 6-2.1-2-5 and IC 6-2.1-2-3.

RULING

The Department rules that the applicable gross income tax rate for gross income received by the taxpayer under the Operating and Maintenance and Common Facilities Agreements for processing coal into coke (wholesale sales) is three-tenths of one percent (0.3%). The applicable gross income tax rate for any other gross income received by the taxpayer under the Operating and Maintenance and Common Facilities Agreements that is not for processing coal into coke is one and two-tenths percent (1.2%).

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.